

# Terms and Conditions

## Wireless

### Duration

Agreement commences upon using of this service and will be binding on a month to month basis. Either party may cancel the agreement with written notice by e-mail to the other party, provided one calendar month is given preceding the date of prospective return.

### Payment

The service provider will invoice the customer on the same day the service is activated, and thereafter on or before the 26th of every month. Payment must be made by the customer on or before the 1st day of the next month wherein the customer has been invoiced. Payment should be by EFT, Creditcard or Debitorder. No payments already made to the service provider are refundable. The service provider is entitled to any rates increase and will notify the customer via email. The customer will not be entitled to withhold or reduce any payments withheld or hold the service provider liable for damages in case of disruption, delay or suspension of service for whatever reason.

### Breach of Contract

If the customer fails to pay on or before the 7th day of every month or fails to perform any of his / her obligations under this Agreement and persists for 3 (three) days after dispatch of an e-mail to the customer, the service provider will without prejudice to rights, cancel the agreement and / or suspend the service immediately and retain all rights to take legal action to recover damages and collect arrears. An amount of R50 is payable for reconnection. The customer will be liable for costs on a solicitor-customer scale if legal action is taken and consents to the jurisdiction of the Magistrate's court.

### Obligations of the Customer

The customer undertakes not to use services and / or equipment for illegal or improper purposes, and to maintain equipment only for the purpose for which it was manufactured. The customer may not make changes to equipment. The customer will comply with applicable laws including immaterial rights.

### Maintenance

The service provider may temporarily waive its obligations in terms of the agreement in order to do improvements, maintenance and repairs to services and / or equipment and the customer may not hold the service provider liable for any damages. The service provider is not required but will attempt to notify the customer in advance of any interruption, delay or suspension of services. The service provider undertakes to

maintain the software and operation of the wireless devices (erected outside the premises of the customer, and that links with service provider's network). Maintenance of this device on a physical level has to be kept by the customer.

## **Cession of Rights & Obligations**

The customer may not have any rights and / or liabilities ceded under the agreement unless prior written consent from the service provider is obtained beforehand. The service provider will be allowed to have his / her rights and / or obligations in terms of the agreement ceded.

## **Defining a Basic Installation**

A basic installation consists of the following 3 aspects:

*CPE (client premise equipment) is mounted outside. The CPE comes in small, medium or large sizes, depending on the distance from the AP it has to connect to. It is normally a small weatherproof device mounted on an exterior wall, the eaves or rooftop. It can also be mounted on a separate free-standing pole or tower. The installed CPE points to the AP located strategically to service a specific area.*

*Wiring: A CAT5 cable also known as Ethernet cable is run down from the CPE on an exterior wall. Our installers try to obscure the cable as much as possible. The cable needs to transfer from the outside of the house to the inside either through the roof, or through drilling a small hole in a wall or door/window frame. If there are existing cabling for phone, or Satellite TV we will try to work with these as much as possible. If you need additional wiring please contact us for an official quotation.*

*Connect your computer(s): Once inside the house the cable is connected to a power source called a POE (power over Ethernet) that supplies the equipment outside with DC electricity. The CAT5 cable coming from the POE can be connected to a single computer or into the internal network. A basic installation provides you with 1 Ethernet connection.*

With everything in place – the connection is tested and all basic configuration setups are done.

### **A Basic Installation includes:**

Traveling

Installation and activation charge

30m or less of CAT5 cable

CPE with POE

One exterior wall mount

One connection and configuration to a computer network card, or to the internal network

**The following is considered additional and will be charged separately:**

To install switches, Wi-Fi hotspots, VOIP connections etcetera will all be charged additional.

Special installations (e.g. Non-penetrating roof mount, extension pole, wall jack, additional cabling beyond 30m etc.) Custom installation is done by quote only. Trouble shooting computer problems are also not included. Normal labour rates will apply to assist with these problems.

**Ownership of Equipment**

The CPE and POE supplied at installation remains the property of SWDconnect and must be returned to us upon termination of service if the account is not payed in full. Whilst the CPE is in service on your premises you are responsible to insure it against theft or accidental damage (as covered under a standard short-term insurance policy) – or if you do not have insurance, pay for the repair or replacement if such damage occurs. SWDconnect will however support and maintain this CPE to operate optimally – which includes installing new firmware updates as they become available. The CPE should have a technology lifespan of at least 2 years. CPE's older than 2 years that need to be upgraded will result in an upgrade cost for the customer.

All other equipment installed is purchased from SWDconnect and ownership transfers once fully paid. Although most of this additional equipment comes with guarantees / warranties, it still remains equipment under your care and needs to be maintained / operated in accordance with the suppliers' specifications. Any after sales support on this equipment that is not covered by the manufacturer's guarantee, or that does not clearly point to a faulty installation by SWDconnect, will be chargeable to the customer.

**Environmental Factors to Consider.**

Heat, cold, rain should not under normal circumstances affect your wireless connection. Environmental factors like electrical surges, lightning, water damage and extreme winds can affect your connection.

The Internet connection is relayed wirelessly through our network and is reliant on electricity. Although we do have electrical backups throughout our network, and backup generators at all our data centres, extreme periods of electricity loss could affect the service we supply.

**Demarcation and Fault Finding**

SWDconnect provide ICT (Information and Communication Technology) services over its wireless network. The point of demarcation between the SWDconnect network and the customer network is the CPE. SWDconnect is not responsible for the operation of the customer network beyond this point. In the event of a loss of service, it is the customer's responsibility to ensure their network is functional, and that all cabling and equipment is operational. All cabling and equipment on the customer's premise can be serviced by any well-trained IT technician.

In the event that the customer requests a service call, SWDconnect personnel will remotely test the service to the CPE. If the CPE is connected to the network we will log into the CPE and check for LAN (Local Area Network) connections to the internal network. If there is no fault to this point, a call can be logged, but a service charge will apply.

A fault can be reported by either phoning the call centre at 0280070020, sending an e-mail to support@swdconnect.co.za or by logging it through the portal at account.swd.net.za. A customer number and a clear fault description must accompany the report.

Damaged equipment will be replaced under warranty, if applicable, unless damage is caused by factors not covered in the warranty. Equipment damage out of warranty will be billed to the customer.

SWDconnect provide free technical and telephonic support, but it is limited to your connection and related issues with our service. Any computer related problems, software problems, Operating System problems, printer problems, virus issues etcetera will be handled as IT support and is chargeable if not referred to a local IT hardware company.

## **Usage Terms & Conditions**

*The customer undertakes that he/she/they:*

will not knowingly create store or disseminate any illegal content,

commit to lawfully conduct him/her/themselves in the use of the services, including copyright and intellectual property rights,

undertake not to send or promote the sending of spam

will be responsible to manage and control the use of the service by minors able to access the SWDconnect network under his/her/their care.

have read the AUP (Acceptable Usage Policy) as found on request to SWDconnect and will use the SWDconnect service in accordance with these policies.

have read and agree with the SWDconnect Privacy Policy that can be found on request to SWDconnect Website.

SWDconnect has the right to the following if the usage terms are not upheld:

to remove any content hosted by that customer which it considers illegal or for which it has received a take-down notice,

to suspend or terminate the service of any customer that does not comply with the Terms & Conditions, the Acceptable Usage Policy or any other contractual obligations.

### **Acknowledgements by Customer**

That ownership of wireless equipment used to connect to the service provider's network remains that of the service provider.

The customer must ensure the necessary security of the equipment.

If equipment is damaged, destroyed, disposed of or stolen, regardless of the cause, including lightning damage and damage caused by electrical undulations, the customer will be liable to the service provider for damages.

If Agreement is cancelled, wireless equipment should be delivered back to the service provider in the same condition as received if not paid in full.

The service provider will contact the customer and agree on a time and date after which an agent of the service provider will remove the wireless equipment.

If the service provider receives no cooperation in this regard from the customer, the service provider will immediately remove all wireless devices with or without the consent of the customer and the latter indemnify the service provider or its agent against a criminal charge of trespassing if equipment is removed.

Under no circumstances is the customer allowed to remove the wireless equipment such as stated above.

Any passing of time not be construed as a waiver of the service provider's rights.

The customer is aware that changes could be made to the MoA relating to the conditions of service, and that these changes will be applicable to his/her/their service agreement. The latest version of the MoA as can be found on SWDconnect Website will always contain the relevant set of terms and conditions.

Any aspect relating to the service provided or payment thereof that the customer wants to bring into dispute, has to be submitted to SWDconnect in writing via email or registered mail. SWDconnect will acknowledge the receipt of such communication and

will respond thereto based on its fair interpretation of the content of this Memorandum of Agreement as well as all relevant information as contained on the SWDconnect Website.

## **FTTH**

### **1. NATURE OF THE GENERAL TERMS AND CONDITIONS**

1.1. These General Terms govern the provision of all services and the relationship between Customer and SWDconnect in general.

1.2. If SWDconnect and Customer conclude multiple Subscriber Agreements, but only one set of General Terms, then that set of General Terms will apply to all Subscriber Agreements, regardless of whether the system generated contract numbers on the documents are not the same.

1.3. If SWDconnect and Customer conclude multiple Subscriber Agreements, each with its version of General Terms, then the General Terms will apply only to the relevant Subscriber Agreement— as evidenced by the system generated contract number.

### **2. DURATION, RENEWAL AND TERMINATION FOR CONVENIENCE**

2.1. Commencement and duration of the Contract, billing start dates and renewal

2.1.1. The Contract will become binding on the Parties on the Commencement date and will continue to be binding on each Party up to the end of the Initial Period or any Renewal Period, unless this Contract is terminated earlier by either of the Parties for cause on the grounds set out in the Contract.

2.1.2. In respect of a Service that does not involve the provision of a Circuit, or is provided over an Excluded Circuit, the Initial Period will commence on the Activation Date of such Service. In respect of each Circuit, the Initial Period for Services provided over that Circuit (whether bundled with the Circuit or not) will commence from the Activation Date. Where the Services require the provision of multiple Circuits, the Initial Period will begin on the Connection Date of the last Circuit.

2.1.3. When services are bundled with a Circuit, the cost of the Circuit is the single most significant component of the bundled Service, and accordingly, Customer agrees that SWDconnect will be entitled to charge Customer from the Connection Date, regardless of whether any bundled value-added services had been activated or not.

2.1.4. If Customer is a juristic person then Customer must:

a) give SWDconnect written notice of its election not to renew the Contract at least 90 (ninety) days before the expiration of the Initial Period;

or

b) conclude a revised Subscriber Agreement, failing which the agreement shall automatically renew for the Renewal Period.

2.2. Cancellation or variation of the Services before the Connection / Activation date Where the Customer cancels or varies any of the SWDconnect services before the Connection Date for any reason other than a breach on the part of SWDconnect, SWDconnect will have the right to charge the Customer Anticipatory Costs which SWDconnect has incurred because of the cancellation or variation, which amount shall be payable by the Customer on demand.

2.3. Termination of a Fixed Term Agreement by an Individual Consumer for no cause

2.3.1. Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Consumer gives SWDconnect at least 20 (Twenty) Business days written notice of its election to terminate the Contract. Such termination will be subject to payment of a reasonable cancellation fee that will be determined and calculated at the time when the notice to terminate is given by the consumer, using the guidelines set out under section 14 and regulation 5(2) of the CPA.

2.3.2. On receipt of the termination notice SWDconnect will advise the Individual Consumer of the amounts which are still owed to it, namely all the arrears amounts owing to SWDconnect in terms of the Contract up to date of termination and the cancellation fee. The Individual Consumer will pay SWDconnect such amounts by the Due Date.

### **3. INSTALLATIONS AND PROVISION OF THE SWDCONNECT SERVICES**

3.1. Installation of Services, Managed Service Equipment, Subscriber Equipment and use of unauthorised devices

3.1.1. Unless agreed to the contrary in a Subscriber Agreement, the SWDconnect Service is exclusive of any required Subscriber Equipment. The Managed Service Equipment and where applicable the Subscriber Equipment will be either leased or sold to the Customer at the prices, fees or rates set out in the Subscriber Agreement.

3.1.2. Where Customer has agreed to purchase Subscriber Equipment from SWDconnect, Customer shall not be entitled to withhold payment for the sale of Subscriber Equipment for trivial reasons.

3.1.3. In respect of the provision of electronic communications services, SWDconnect shall install the Circuit and the Managed Service Equipment at the Customer's premises

against payment of the relevant installation fee and deposit as set out in the Subscriber Agreement.

3.1.4. If the Customer requests that an installation be attended to after office hours, SWDconnect may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by SWDconnect from time to time.

3.1.5. LAN cabling pricing is deemed to be budgetary unless a physical site survey has taken place to confirm cable routes.

3.1.6. If no conduit-pipes are available for SWDconnect's use in any building where SWDconnect must install a Service requiring conduit pipes, SWDconnect may, at its discretion:

a) refuse to provide the Service in that building or any part thereof until such conduit-pipes or other facilities have been so installed;

or

b) quote an installation cost in respect of the required conduit pipes, and if accepted by the Customer, install at the Customer's cost the required conduit pipes or other facilities.

3.1.7. SWDconnect's duty to install the Circuit and the Managed Service Equipment or Subscriber Equipment will terminate once the Circuit and where applicable the Managed Service Equipment or Subscriber Equipment have been supplied, installed and the Customer can receive the Services.

3.1.8. Only Subscriber Equipment that has been type approved by ICASA may be used in conjunction with the SWDconnect Service. Type approved equipment obtained from authorised dealers will have an ICASA type approved label affixed to the equipment and/or packaging.

3.1.9. If the Subscriber Equipment is modified, it may not be used in conjunction with the SWDconnect Service until such time that ICASA has approved the modification.

3.1.10. SWDconnect reserves the right to suspend or disconnect from the SWDconnect Network any Subscriber Equipment that has not been approved by ICASA or that has been licensed or approved but has been modified without the approval of ICASA.

3.1.11. If the Customer is not the owner of the premises where the SWDconnect Service and/or where applicable the Managed Service Equipment is to be installed, the Customer must before any installation by SWDconnect, at its own cost and expense, obtain written permission from the owner of such premises for any such



installation. The Customer indemnifies SWDconnect against damages or claims resulting from the failure to obtain such permission including Anticipatory Costs which may have to be incurred by SWDconnect should SWDconnect have to remove any circuit and/or the selected Subscriber Equipment from the premises.

3.1.12. The Customer must at its own cost and expense ensure that optimum environmental conditions as may be required for the proper management and/or functioning of the Circuit and Managed Service Equipment or Subscriber Equipment are provided, such as adequate power supply, ventilation, lighting and wall/rack space.

### 3.2. Use of the Services, Managed Service Equipment and related equipment

3.2.1. The provision of any Service to the Customer does not confer on the Customer any right to resell the Service unless the Customer has been granted a licence or licence exemption by ICASA, and Customer has entered into a reseller agreement with SWDconnect.

3.2.2. The service may not be used to:

- a) knowingly create, store or disseminate any illegal content;
- b) infringe on any third parties' intellectual property or copyright;

and

c) send unsolicited email.

3.2.3. For SWDconnect to ensure the provision of the Service, to protect the integrity of the SWDconnect Network or to deal with emergencies, the Customer must always whilst this Contract is in place:

a) comply with any instructions issued by SWDconnect which concern the Customer's use of the Services;

b) provide SWDconnect with all information relating to the Customer's use of the Services that SWDconnect may reasonably require from time to time;

and

c) allow SWDconnect free access to the Customer's premises during reasonable hours to install, inspect, maintain or remove the Circuit, Managed Service Equipment or Subscriber Equipment.

### 3.3. Failure and unavailability of the Services, Managed Service Equipment or Subscriber Equipment obtained from SWDconnect

3.3.1. Customer recognizes that the Internet and data networks consist of multiple participating networks that are separately owned and not subject to SWDconnect's control.

3.3.2. Because of the position set out in clause 3.3.1 above, SWDconnect does not warrant that the SWDconnect services will be operational on a 24 (twentyfour) hour 365 (three hundred and sixty-five) days per year basis.

3.3.3. Furthermore, SWDconnect expressly advises, and the Customer acknowledges and accepts that the Subscriber Equipment is not manufactured by SWDconnect, but by third parties. In most cases, SWDconnect will not be able to open certain Subscriber Equipment or to test or operate the selected Subscriber Equipment to ensure that they are fit for purpose and/or are intact before they are handed to the Customer.

3.3.4. Considering the disclosures housed under clauses 3.3.1 - 3.3.3 SWDconnect expressly stipulates and the Customer acknowledges that SWDconnect cannot warrant or guarantee that the Services and/or the Subscriber Equipment will:

- a) be free of errors or interruptions;
- b) be available;
- c) be fit for any purpose;
- d) not infringe on any third-party rights;
- e) be secure and reliable, except where the Services, the Circuit and/or Subscriber Equipment are found to be defective and such defect has been solely caused by SWDconnect under sections 54, 55 and 56 of the CPA, where applicable.

3.3.5. Considering the above disclosures, Customer agrees that it will not be allowed to:

- a) Withhold any amounts due and owing to SWDconnect; or
- b) Deduct any monies, or
- c) Allege a breach of contract

in respect of any temporary unavailability of the Services, the Circuit or the Managed Service Equipment, except and to the degree that SWDconnect is solely responsible for any such unavailability, or failure.

3.3.6. Notwithstanding the provisions of clause 3.3.4 above, SWDconnect will use its best endeavours where SWDconnect can do so to notify the Customer of any failure of,

or interruption to the Services and/or Circuit and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability.

3.3.7. Where the Circuit, Managed Service Equipment or where relevant the Subscriber Equipment are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 10.

### 3.4. Theft and Loss of SWDconnect Circuit, Managed Service Equipment and Subscriber Equipment provided by SWDconnect

3.4.1. Whenever any Circuit, Managed Service Equipment or Subscriber Equipment purchased from SWDconnect has been delivered but is not yet paid for in full is lost, stolen or destroyed, the Customer must immediately notify SWDconnect and any police officer at any police station in writing that the Circuit, Managed Service Equipment and or any other SWDconnect equipment has been lost, stolen, misplaced or destroyed.

3.4.2. Risk in the loss, theft or damage of the Circuit, Managed Service Equipment and where relevant the Subscriber Equipment will pass to the Customer on the date of delivery to the Customer's premises. SWDconnect reserves the right to hold the Customer liable for the full replacement cost of the Managed Service Equipment or the relevant Subscriber Equipment and or any other SWDconnect equipment (and where the same equipment has been discontinued, then the full replacement cost of the most comparable available equipment).

### 3.5. Maintenance of the Services and Managed Service Equipment

3.5.1. Throughout the term of the Contract the Service, any Circuit or Managed Service Equipment used by the Customer will be deemed to be in good working order until SWDconnect is advised otherwise.

3.5.2. Unless clauses 3.5.5 or 3.5.6 apply, or unless expressly stated to the contrary, the costs in respect of any repair and/or maintenance of the Circuit and the Service will be incurred and covered by SWDconnect.

3.5.3. SWDconnect will attend to faults reported by the Customer during Office hours and will apply its reasonable endeavours to have the affected Circuit and/or the Service restored in the shortest possible time.

3.5.4. The Customer is responsible for maintaining all Managed Service Equipment and Subscriber Equipment unless SWDconnect has agreed to provide maintenance for the Managed Service Equipment, which will be charged out at the rate set out in the Subscriber Agreement.

3.5.5. If the Customer requests that a fault be attended to immediately and requires that repair work be carried out after office hours, SWDconnect may, if it can perform

such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by SWDconnect from time to time.

3.5.6. If SWDconnect determines that the fault reported by the Customer was caused by the Customer or by any Subscriber Equipment or by any other equipment that SWDconnect has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by SWDconnect from time to time.

## **4. CHARGES AND PAYMENT**

4.1. In return for the supply of and access to the Services, the Customer agrees and undertakes to pay SWDconnect the Charges.

4.2. Any invoice will, where applicable, detail the following types of Charges:

4.2.1. installation charge: the installation charge and any other charges levied as a once-off initial charge in respect of the connection of the Services;

4.2.2. reconnection charge: levied, where the Customer's right to use the Services is suspended due to non-payment, and which fee is in respect of any restoration of the Service, is payable in advance, together with any outstanding amounts which are due to SWDconnect;

4.2.3. ad-hoc / time and material charges: levied on each occasion for the provision of miscellaneous services requested by the Customer;

4.2.4. recurring/rental charges: levied periodically, usually monthly – but in any event, as indicated in the Subscriber agreement – in respect of the use and availability of the Services. Recurring charges are payable in advance for the first and any subsequent rental period on the first day of the month, with effect from the Activation Date;

4.2.5. cancellation fee: a fee raised by SWDconnect to place it in the position it would have been had the Customer fulfilled the Contract;

4.2.6. call/usage charges: levied on the use of the Service where such use is metered. Call charges and usage charges are billed to the Customer at the end of each billing period.

4.2.7. anticipatory costs: levied to recover the charges that SWDconnect would have billed for the duration of the Fixed Term Agreement if the Contract had run its full term.

4.2.8. interest on overdue amounts: any amount due by the Customer to SWDconnect not paid on or before the Due date indicated on the invoice shall bear Interest from the date that an Invoice became due.

### **4.3. Billing**

4.3.1. SWDconnect will periodically provide the Customer, usually monthly, with a statement and an invoice for the amounts payable by the Customer. The invoice will be sent to the Customer by email.

4.3.2. Where there is an event which prevents an accurate determination of the number of units on which the call or usage charges are determined for a billing period, the call charge or usage charges for the period in question shall be set as the average call or usage charges for the preceding 6 (six) billing periods (or lesser billing periods if the Service has been provided for a shorter time).

4.3.3. The invoice sent by SWDconnect to the Customer is on the face of it, and until the contrary is proved, proof of the amount due by the Customer to SWDconnect. The Customer is, however, entitled to query or dispute any part of the invoice per the provisions set out under clause 13. All undisputed portions of the invoice must, however, be paid by the Due date.

4.3.4. If SWDconnect determines that the disputed amount is in error, SWDconnect shall credit the amount incorrectly debited. Should SWDconnect determine and inform the Customer that the disputed amount was billed correctly such payment, together with interest at the Interest Rate shall be paid by no later than the Due date of the next invoice.

#### **4.4. Payments**

4.4.1. Unless SWDconnect expressly agrees to the contrary in writing, invoices are payable on presentation by way of a monthly debit order or using a credit card. The first invoice for a Service is issued upon activation of service and payable on presentation.

4.4.2. Invoices and statements are available for download in SWDconnect Portal. Non-receipt of an invoice by the Customer shall therefore not be considered as a valid reason for late or non-payment.

4.4.3. The Customer shall be liable and responsible for payment until payment has been received into SWDconnect's bank account.

4.4.4. The Customer shall be in breach of the Contract by cancelling any debit order without the prior written consent of SWDconnect or where any debit order is returned unpaid or stopped or should any charge card account, or credit card account of the Customer be rejected. In such a case, SWDconnect will have the right to suspend the Customer's account until such arrears amounts together with interest thereon have been received and paid in full.

#### **4.5. Changes to Charges**

4.5.1. SWDconnect shall be entitled to increase any of the amounts reflected in the Subscriber agreement, which increase will be relative to the Consumer Price Index. Increases linked to the Consumer Price Index usually are done once per year between January and April.

4.5.2. If there is a price increase on components of the Services beyond the control of SWDconnect (for example: foreign exchange fluctuations, increased pricing on third-party products or services like software license fees, surcharges, taxes, import duties, rates or levies, increased charges from other network operators or delay caused by any instruction of Customer), then SWDconnect shall be entitled to increase the Charges of the affected Service in proportion to the increase in cost.

4.5.3. Any increase as per clause 4.5.1 and 4.5.2 will be given to the Customer in writing.

4.5.4. A Consumer will have the right to terminate the Contract without penalty or charge where any such increases render the Service unaffordable to the Consumer, on condition that it gives SWDconnect 20 (twenty) Business days' notice of its election to cancel the Contract. Where a Consumer terminates the Contract as per its rights under this clause 4.5.4 such termination will be without penalty, except where the Consumer has been given or has purchased but not yet paid for Subscriber Equipment. In such a case the Consumer will have a legal duty, and SWDconnect will have a legal right to demand from the Consumer full payment in respect of the Subscriber Equipment less any amounts that have already been paid to SWDconnect in respect thereof before such termination.

#### **4.6. Unpaid accounts – Suspension of Services**

4.6.1. Where any amounts due to SWDconnect by the Customer are not paid on Due date, SWDconnect shall give the Customer 7 (seven) days' notice to pay all arrears/outstanding amounts and start charging interest at the Interest Rate.

4.6.2. If the Customer's account remains unpaid or no written agreement is concluded to settle the arrears, SWDconnect shall suspend the Customer's services, and the suspension will stay in place until the Customer has paid all arrear amounts, interest and any applicable reconnection charges or the Contract is terminated by SWDconnect.

4.6.3. If the Customer's account is in arrears, then SWDconnect shall be entitled to suspend all Services linked to the Customer's account, regardless of whether the suspended Services are delivered according to multiple Subscriber Agreements or not.

#### **4.7. Credit Limit and payment terms**

4.7.1. SWDconnect reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period, and

SWDconnect shall be entitled after the Customer has been given 20 (Twenty) days' notice of such overspend to which the Customer has not responded, to suspend the Services should the Customer exceed the maximum amount.

4.7.2. If SWDconnect and Customer agree on payment terms that are different to those set out in clause 4.4 and SWDconnect had to provide Customer with a notice in terms of clause 4.6.1 twice in any rolling 12 calendar month period, then SWDconnect shall be entitled to revert to the default payment terms set out in this clause 4.

## **5. SUSPENSION, WITHDRAWAL OR TERMINATION OF THE SWDCONNECT SERVICE**

5.1. SWDconnect may from time to time, and on notice where this is possible, suspend the SWDconnect Service and where applicable the right to use the Managed Service Equipment, or in its discretion disconnect the Managed Service Equipment from the SWDconnect Network in any of the following circumstances:

5.1.1. for routine maintenance, modifications to, or unplanned maintenance of the SWDconnect Network and/or any other systems involved in the delivery of the Services;

5.1.2. to mitigate against fraudulent or suspected fraudulent use of the Customer's Service;

5.1.3. per clause 4.6 or 4.7.1 above;

5.1.4. because of problems on third parties' infrastructure which has affected or disrupted the SWDconnect Service;

5.1.5. where certain Services are being abused by the Customer; and/or

5.1.6. where the SWDconnect Service or Managed Service Equipment is found to contain a security risk or shortcoming which enables the Customer to exploit the SWDconnect Service to the detriment of SWDconnect;

5.1.7. where the Customer uses Subscriber Equipment that is not approved by ICASA for such use;

5.1.8. Where the Service is removed because of a take-down notice that SWDconnect is obliged to act on.

5.2. The Customer accepts that the right to suspend the Services is necessary to maintain the quality of Services, the integrity of the SWDconnect Network, and to protect the interest of both the Customer and SWDconnect and that it will remain liable for all Charges which may be levied by SWDconnect during the period of suspension.

5.3. SWDconnect may from time to time, and on notice where this is possible, and without prejudice to any other claims or remedies which SWDconnect may have in terms hereof or in law, discontinue and/or terminate any part of the Contract, or in its discretion disconnect the Managed Service Equipment from the SWDconnect Network in any of the following circumstances:

5.3.1. where the SWDconnect Service or Managed Service Equipment has reached the end of its lifespan and is uneconomical to maintain or continue;

5.3.2. where there has been an insignificant interest in the use of a Service;

5.3.3. in response to an instruction from ICASA or in terms of the ECA or some other law or any authority competent to issue such instruction;

5.3.4. if the Customer has received the Service because of fraud or misrepresentation;

5.3.5. if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;

5.3.6. if the Customer is using or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of Applicable Law;

5.3.7. for any other reason incidental to 5.3.1 - 5.3.6 inclusive.

## **6. BREACH AND TERMINATION**

6.1. Should the Customer breach:

6.1.1. its payment obligations and have been suspended for non-payment for a period longer than 7 (seven) days; or

6.1.2. any other term of this Contract and fails to rectify the breach within the notice period provided by SWDconnect (which shall be a reasonable period given the circumstances of the breach); then SWDconnect will have the right to either suspend or to cancel the Contract(s), without diminishing its right to claim any Anticipatory Costs or early termination penalties.

6.2. Should SWDconnect breach any material term of this Contract, then the Customer will have the right to provide SWDconnect with a letter requiring SWDconnect to rectify the breach within a period of 20 (twenty) Business Days. Should SWDconnect neglect or fail to remedy such breach within the 20 (twenty) Business Days' notice period, then the Customer may cancel the Contract without penalty.



6.3. The Customer shall be liable for all costs, including legal costs on an attorney and client scale, tracing cost and collection commission incurred by SWDconnect in respect of the enforcement of any obligations of the Customer in terms of this Contract.

6.4. Without diminishing any other claims or remedies which SWDconnect may have against the Customer in terms of this Contract or law, SWDconnect may terminate the Contract if the Customer has delayed the installation of the Service for longer than 3 (three) months and hold the Customer liable for Anticipatory Costs incurred by SWDconnect in this regard.

## **7. SUPERVENING IMPOSSIBILITY**

Except as expressly provided under the Contract, SWDconnect shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond SWDconnect's reasonable control. Should any event contemplated in this clause prevent the provision of uninterrupted Service for a period exceeding four weeks, the Customer shall be entitled to terminate the affected Service without penalty.

## **8. CONSEQUENCES OF TERMINATION**

After termination of the Contract for whatever reason:

8.1. SWDconnect may, on reasonable notice and in the Customer's presence enter the Customer's premises to remove the Managed Service Equipment which is owned by SWDconnect; and

8.2. Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued thereafter because of the termination.

## **9. LIMITED LIABILITY AND INDEMNITY**

9.1. In respect of internet-based services, SWDconnect only provides access to the Internet. SWDconnect does not operate or control the information, services, opinions or other content of the Internet. SWDconnect reserves the right to take measures as may be necessary, in SWDconnect's sole discretion, to ensure security and continuity of service on the SWDconnect Network, including but not limited to identification and blocking or filtering of internet traffic sources which SWDconnect deems to pose a security risk or operational risk or a violation of its AUP. In addition, the Customer understands that SWDconnect does not own or control other third-party networks outside of the SWDconnect Network, and SWDconnect is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or

within interconnection points between SWDconnect Network and other third-party networks.

9.2. The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. SWDconnect shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security. The Customer shall remain fully responsible to SWDconnect for any usage billing billed to Customer's account up to 30 minutes after Customer had logged an official support ticket with SWDconnect requesting suspension of the Services impacted by unauthorised access to the Services.

9.3. SWDconnect assumes no responsibility for the integrity, correctness, retention or content of electronic data transported via the SWDconnect Network.

9.4. Subject to the provisions of clause 9.6 below, SWDconnect shall not be liable to the customer or to any third party for claims that arise or occur because of the customer's use of the services, whether such claim, action or damage is direct or indirect, consequential or contingent. SWDconnect shall not be liable for any loss of life; injury; medical expenses; support; financial loss or financial support; loss of earnings; loss of profit and/or income; loss of revenue; loss of business or goodwill; any other special damages; or any general damages – regardless of whether it was foreseeable or flowed naturally from the use of the Services.

9.5. Customer indemnifies SWDconnect against any claim or action which may be brought by any third party arising out of Customer's use of the Services or out of the use of the Customer's Services.

9.6. Where a Consumer suffers any loss or damages because of the use of the SWDconnect Service, the Consumer in this case will be allowed to avail itself to the provisions housed under section 61 of the CPA, but subject always to the defences and exceptions permissible and available to SWDconnect and its service providers under section 61 of the CPA.

9.7. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Contract.

## **10. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA**

10.1. SWDconnect reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. SWDconnect shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.

10.2. The Customer warrants and represents that all information supplied by it is accurate, correct and complete.

10.3. SWDconnect will use the Customer's Personal Data strictly in accordance with the Regulations promulgated in terms of Section 69 of the ECA or the Protection of Personal Information Act, whichever is applicable.

10.4. Customer will provide SWDconnect with all required Personal Data and other details which SWDconnect is required to obtain from the Customer in terms of section 39 or 40 of RICA.

10.5. Customer shall not transfer the Service to another person, other than a family member or dependent.

10.6. The Customer acknowledges and accepts that where the Customer does not comply with these provisions, it will amount to a material breach by the Customer of the Contract.

## **11. CANCELLATION PROCESS**

11.1. Unless SWDconnect expressly agrees to the contrary in writing, Customer must cancel services on at least 90 days' advance notice to take effect at the end of the Initial Period or the Renewal Period, failing which SWDconnect may charge the Customer a cancellation fee.

11.2. Cancellations must be processed through the cancellation request form in the SWDconnect Portal, or Customer must send a cancellation request to [info@swdconnect.co.za](mailto:info@swdconnect.co.za). The online cancellation request form will reflect the duration that is left for each Service as well as the cancellation fee (if any) of each Service. Cancellations received by email will be followed up with a quote setting out the cancellation fee (if any) of each Service.

11.3. Email cancellations must contain at least the following information:

11.3.1. The Customer's account number; and

11.3.2. The description of the Service/s to be cancelled as is described on the Customer's invoice.

11.4. SWDconnect will not be deemed to have received a cancellation notice unless it has issued Customer with written confirmation of receipt and a unique reference number. If Customer is not furnished with a unique reference number within 48 hours of transmitting its cancellation notice, Customer must escalate to [info@swdconnect.co.za](mailto:info@swdconnect.co.za).

11.5. SWDconnect's processing of a cancellation request shall be without prejudice to its right to any claim that it may have in terms of this Contract. Customer acknowledges that in many instances cancellation of Services is not reversible or may attract financial penalties, and therefore SWDconnect may delay the actual termination of Services after

acknowledging receipt of a cancellation notice to communicate to Customer the consequences of termination and to allow Customer to withdraw a cancellation notice.

11.6. Customer shall remain liable for any Charges raised by SWDconnect against the Customer's account after the Customer has sent SWDconnect a cancellation notice that is not processed in the manner set out herein.

## **12. Equipment**

12.1. The Managed Service Equipment will be provisioned with a standard configuration in respect of the ordered Service.

12.2. The Customer must identify a suitable location for the Equipment. The location must be dry, free from vibration and well ventilated. Installation is only possible if the distance from the termination point of the Circuit and a 220V energy supply to the position the Equipment is not greater than 2 metres.

12.3. In the event of failure of the Equipment, SWDconnect will repair or replace (at SWDconnect's discretion) the Equipment where such failure is covered by the warranty of the original equipment manufacturer. Where the Equipment is replaced, the Customer must return the original Equipment to SWDconnect.

12.4. The Customer accept liability for any costs incurred by SWDconnect as a result of repair or replacement of Equipment where the Equipment failure was caused by the Customer's use, misuse or changes to the Equipment, other than as previously agreed to in writing by SWDconnect.

12.5. SWDconnect will retain the password for the Equipment. Responsibility for the IP configuration of the Service Configuration lies with SWDconnect.

12.6. Ownership of the Equipment vests in the SWDconnect. Equipment is not subject to a rent-to-own contract.

## **13. Cancellation Terms**

13.1. Customer must give one clear calendar month notice of his/her intention to cancel the service. Cancellations must be processed in the SWDconnect customer portal or sent to SWDconnect in writing.

13.2. If a cancellation in terms of clause 8.1 above results in the termination of service prior to the expiration date of a fixed term agreement, then SWDconnect shall be entitled to levy a termination fee equal to the fees that would have become due and payable in respect of the balance of the contract term.

13.3. If Customer terminates a Circuit prior to it being activated by SWDconnect or prevents SWDconnect from activating the Circuit after it has been ordered, then the

Customer shall be liable to SWDconnect for any installation and other charges that it is liable to pay the network operator.

**Acceptance of terms and conditions.**

By using any service supplied by SWDconnect you accept all the terms and conditions set out above and are legally bound by them until the end of your contract.

All cancelation fees and outstanding amounts will still be payable in full to terminate your contract completely.